

Idaho Industrial Commission

"2005/2006 Developments in Workers' Compensation"

March 2007 — Issue 1

Dear Certification Course Attendees,

We have some updates for Certified Idaho Workers' Compensation Specialist Course Attendees!

A review of recent Industrial Commission and Supreme Court Decisions. Mileage reimbursement rates changed throughout 2005, and the Benefit Rates have increased in 2007. Legislative statute changes have been summarized as well as the 52-week income benefit rate changes. Meet the guest speakers and co-sponsors from our Certification courses.

Hope you enjoy the updates!

Best wishes,

Kim Takagi, Developer and Lead Instructor

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Feature Article: Recent I.C. and Supreme Court Decisions--what you should know.



It is important to keep up to date on new decisions that are being issued by the Industrial Commission and the Idaho Supreme Court. Any number of these decisions could have an impact on the way you view and handle a specific workers' compensation matter.

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Sundquist vs. Precision Steel & Gypsum Inc.- 141 Idaho 450

Sundquist worked as a drywall taper for most of his adult life. He worked for several employers since 1968, and came to work at Precision Steel in February of 2002. In late 2000, while working for a previous employer, Sundquist noticed occasional right elbow and wrist tenderness. This increased upon beginning work for Precision Steel due to longer hours and harder work. On April 26, 2002, Sundquist sought medical treatment for severe wrist pain. However, it was not until June 13, 2002, that Sundquist's physician first told him his symptoms were related to work. After a hearing, an Industrial Commission referee determined that Precision was wholly liable for Sundquist's condition, and that no "preexisting" condition existed. The referee also felt Sundquist was not aware of his occupational disease until his doctor diagnosed it on June 13, 2002. Therefore, June 13, 2002, was the manifestation date. The Supreme Court agreed with the I.C. decision on April 6, 2005. This Supreme Court opinion addresses "preexisting condition", manifestation, and when an occupational disease is incurred.

Reese v. V-1 Oil Company – 141 Idaho 630

The employer denied the claimant the only treatment recommended by the claimant's treating physician to alleviate the claimant's continuing pain following his back surgery. The claimant ultimately sought care from another physician, who performed a second surgery that alleviated most of the pain. After a hearing, the Industrial Commission denied medical benefits for the second surgery and total temporary disability benefits during the period of recovery because the claimant had not obtained permission from the employer or Commission before changing physicians. Reese appealed to the Supreme Court, which reversed the Commission's decision and awarded benefits, stating in part,:

"Idaho Code § 72-432(1) requires an employer to provide an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. There is no difference between failing to provide medical treatment that is reasonably required by the employee's physician or needed immediately after an injury and failing to provide such treatment for a reasonable time thereafter. In reviewing the Commission's denial of TTD benefits, the Supreme Court noted that Idaho Code § 72-408 entitles an injured employee to income benefits for total and partial disability during the period of recovery. The entitlement to income benefits is not dependent upon the employee complying with Idaho Code § 72-432(4)(a)."

Michielli v. Midway Automotive Group - 2005 IIC 0622

The claimant was employed as a salesperson for the employer's auto dealership. He owned a high performance motorcycle, which he rode to and from work. The employer's premises consisted of several freestanding buildings separated by 50 to 250 yards of asphalt. The employer had a known, but essentially unenforced policy against employees using their personal vehicles for company business. On the day of the injury, at closing time, the claimant rode his motorcycle from one building to another to deliver a customer's paperwork. After delivering the paperwork, the claimant stated he planned on heading to another building to help close up, but the throttle on his motorcycle stuck and he ran into the building, injuring his right wrist. The employer and co-workers testified that the claimant was known to "show off" on his motorcycle by popping wheelies on the premises, and had been admonished on prior occasions, including that day, against this activity. The Commission found that the 72 foot acceleration skid mark, along with other testimony, made it more likely than not that the claimant was injured as a direct result of showing off by popping a wheelie. When addressing compensability of this injury, the Referee stated that although the injury occurred on the Employer's premises, the claimant had severely deviated from his job duties with his motorcycle antics, and that the injury had not occurred due to an employment created risk. Benefits were denied.

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Mileage Reimbursement Rates in 2005, 2006, 2007

We have all noticed the substantial increase in gas prices since 2005, and that has been reflected in the mileage reimbursement rates also. Here are the 2005, 2006, 2007, mileage reimbursement rates with the effective dates of the change.

Effective Date	Private Vehicle	Meals In State
04-12-2005	40.5 cents per mile	\$30.00 per day
09-01-2005	48.5 cents per mile	\$30.00 per day
01-01-2006	44.5 cents per mile	\$30.00 per day
01-01-2007	48.5 cents per mile	\$30.00 per day

2007 Idaho Workers' Compensation Benefit Rates

	2000	2001	2002	2003	2004	2005	2006	2007
ASW	471.00	495.00	526.00	527.00	534.00	543.00	565.00	584.00
55% ASW (PPI)	259.05	272.25	289.30	289.85	293.70	298.65	310.75	321.20
MIN. 45% ASW*	211.95	222.75	236.70	237.15	240.30	244.35	254.25	262.82
45% INCREASE	6.75	10.80	13.95	0.45	3.15	4.05	9.90	8.55
60% ASW	282.60	297.00	315.60	316.20	320.40	325.80	339.00	350.40
Increase from last year	9.00	14.40	18.60	0.60	4.20	5.40	13.20	11.40
67% ASW	315.57	331.65	352.42	353.09	357.78	363.81	378.55	391.28
Increase from last year	10.05	16.08	20.77	0.67	4.69	6.03	14.74	12.73
90% ASW MAXIMUM	423.90	445.50	473.40	474.30	480.60	488.70	508.50	525.60
Increase from last year	13.50	21.60	27.90	.090	6.30	8.10	19.80	17.10
15% ASW MINIMUM	70.65	74.25	78.90	79.05	80.10	81.45	87.75	87.60
Increase from last year	2.25	3.60	4.65	0.15	1.05	1.35	3.30	2.85
<i>*unless over 90% AWW</i>								

2007 Idaho Workers' Compensation Benefit Rates after 52 Weeks

**Clarification of rate changes after 52 weeks of Total Temporary Disability benefits
(Total Partial Disability excluded)**

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After 52 weeks of Total Disability Benefits

90% ASW decreases to..... current year 67%ASW

67%AWW

If 67% AWW is More than 67% ASW - Decrease to.....67% ASW
If 67% AWW is Less than 67% ASW - Add 67% of the increase in the ASW

45% ASW no change (continues to be current year 45% ASW)

90% AWW changes to.....current year 45% ASW

15% ASW changes to.....current year 45% ASW

Each Jan 1 thereafter, benefits track the ASW

2006 Legislative Changes

Changes and/or additions in bold

72-102 (2) **"Balance Billing" means charging, billing, or otherwise attempting to collect directly from an injured employee payment for medical services in excess of amounts allowable in compensable claims as provided by rules promulgated by the commission pursuant to section 72-508, Idaho Code.**

72-102 (26) **"Provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of medical services related to the treatment of an injured employee which are compensable under Idaho's worker's compensation law.**

72-204 (1) Persons performing service in the course of the trade, **business**, profession or occupation of an employer.

72-204 (4) "Employment," . in the case of private employers, includes employment only in **a that** trade, **business, profession** or occupation which is **normally** carried on by the employer **for the sake of pecuniary gain** and also includes any of the pursuits specified in section 72-212,

72-212 (6) **Employment which is not carried on by the employer for the sake of pecuniary gain.**

72-410 (1) **A child, if under eighteen years of age, or incapable of self support and unmarried, whether or not actually dependent upon the deceased or disabled employee. (a) Under eighteen (18) years of age, or incapable of self-support and unmarried, whether or not actually dependent upon the deceased employee; (b) Under twenty-three (23) years of age if a full-time student and as provided for in section 72-412 (3), Idaho Code.**

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72-327 (1) , (c), and (3) changed regarding the period of indemnity payments to report and the time frame for submitting these reports to the Industrial Commission.

72-412 (2) **Unless as otherwise provided in subsection (3) of this section, to** or for a child, until eighteen (18) years of age, and if incapable of self-support after age eighteen (18) **years** for an additional period not to exceed five hundred (500) weeks, deducting the period benefits which were paid prior to eighteen (18) years of age.

72-412 (3) **To or for a child after age eighteen (18) years who is enrolled as a full-time student in any accredited educational institution, or accredited vocational training program, until such child ceases to be so enrolled or reaches the age of twenty-three (23) years during the quarter or semester in which the child is enrolled, benefits shall continue until the completion of the quarter or semester in which the child reached the age of twenty-three (23) years. This extension of benefits to the age of twenty-three (23) years shall not apply if the accident causing the injury or manifestation of the occupational disease occurred prior to December 31, 2006.**

72-432 (6) **No provider shall engage in balance billing as defined in section 72-102.**

In the Know

Did you know?

Transportation of a deceased worker's remains, due to an on the job injury, is in addition to the current burial benefit of \$6,000.00.

Certification Courses

The Industrial Commission offered 2 courses in Pocatello in 2005, with the help of Portneuf Medical Center Work Med as our co-sponsor. Our thanks again to Terri Benson, the Director of Work Med for her assistance with arrangements for these 2 courses. A course was held in Twin Falls in April of 2006, co-sponsored by Magic Valley Regional Medical Center Occupational Health Center. Our thanks to Bonnie Adams-Williams, for her assistance with arrangements for this course. A course was also held in Coeur d'Alene in October 2006 with Kootenai Medical Center and North Idaho Medical Care Center as our co-sponsors. Our thanks to Jaynine Pfahler and Arista Strait with North Idaho Medical Care Center, and Allisha Degryse with Kootenai Medical Center for their assistance with arrangements for the course. Since the first course was presented in January of 2002, the Industrial Commission has presented 24 Workers' Compensation Certification Courses to 447 attendees with 247 Idaho Workers' Compensation Specialist Certifications issued.

The following pages have class pictures from our 2006 courses and a listing of our guest speakers to date:

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April 2006 course in Twin Falls



Front Row: Heather Sellers, Kim Takagi, Tony Campbell, and Cheryl Phillips.

Middle Row: Dave Duhaime, Emilia Jensen, Bonnie Adams-Williams, Barbara Mickelson, Leslie Holloway, and Geri Bermingham.

Back Row: Deborah Grant, Kathy Bair, Jennifer Poole, Marta Sipple, Greg May, Valerie Fitte, Dan Wolford, Helen Wagner, Dr. David Christensen, Kristen Pugsley, Ginger Hanchett, and Brian Tureman.

February 2006 course in Boise



Front Row: Kim Takagi, Hilary Lopez, Cindy Lijewski, Kathy Vawter, Rick Tuha, and Jennifer Poole.

Middle Row: Alan Conilogue, Alyson Brown, Todd Sutton, Karrie Mansfield, Linda Howard, Jennifer Brainard, Olivia Geidl, Larry Stadler, and Michelle McMullen.

Back Row: Corey Pence, Jud Roth, Alexis Walker, Lori Barnett, Linette Gratham, Terry Evans, Michelle Michaud, Kristi Crane, and Dianne Arndt.

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June 2006 course in Boise



Front Row: Susan Tracy, Nan Ballein, Dr. Mike McClay, Mary Simmons.

Middle Row: Jud Roth, Kathy Johnston, Tiffany Paine, Roxanne Stevens, Linda Salinas, Carlin Hill, Heather McCarthy, and Kim Takagi.

Back Row: Patti Jarossy, Rick Weaver, Dale Varing, Lynne Thielges, Dennis Burks, Andrew Marsh, Judy Challe, Dawn Music, and Alan Taylor.

October 2006 course in Coeur d'Alene



Front Row: Kim Takagi, Kathy Bair, Brenda Stromquist, Mike Powers, Linda Sams, Polly McCune, Lisa Archer, Jayrine Pfahler, and Patti Jarossy.

Middle Row: Susan, Custa, Susan Shiple, Brenda Sullivan, Kimberly Bailey, and Betty Helms, and Arista Strait.

Back Row: Danajo Cole, Brian Edwards, Michele MacKenzie, Allisha Degryse, Therese Kremer-Johnston, Roberta Truscott, Dr. Kirk Hjeltness, Doug Nielson, Deby Anderson, and Tom Martin.

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Thank you to our guest speakers for their continuing support



Kelly Hove,
Claims Administrator
Ada County Risk
Management



Glenna Christensen,
Attorney
Moffatt Thomas Law
Firm



Max Sheils,
Attorney
Ellis, Brown, and Sheils
Law Firm



Impairment Evaluations

Presented by:
Dr. Richard Radnovich

Co-sponsor Guest Speaker

Terri Benson, Director of Work Medicine
Portneuf Regional Medical Center

Industrial Commission Guest Speakers:

Commissioners:

Thomas Limbaugh
R.D. Maynard

Adjudication Division:

Alan Conilogue, Manager
Doug Donahue, Referee
Mike Powers, Referee
Lora Rainey Breen, Referee

Benefits Administration Department:

Rich Monson, Med Fee Dispute Determinations

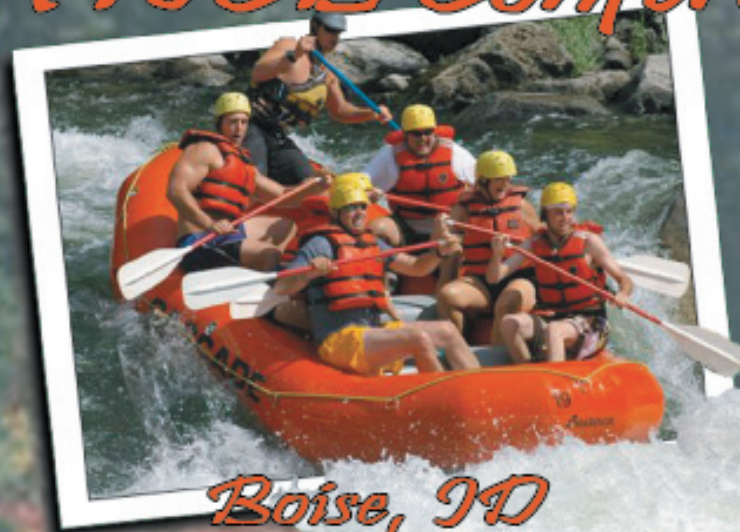
Employer Compliance Department:

Christi Simon, Manager
Lola Barnett, Investigator
Scott Scherrer, Investigator
Geri Bermingham, Investigator
Jon Howell, Investigator
Anne York, Investigator

Rehabilitation Division:

Jud Roth, Regional Manager
Terry Parsons, Regional Manager
Wade Beeler, Field Consultant
Sarah Brown, Field Consultant
Dave Duhaime, Field Consultant

35th Annual WAWCB Conference



Boise, ID
June 25-27, 2007

Idaho is thrilled to be hosting the 2007 WAWCB conference in Boise this summer. The conference will be held in Boise's only four-diamond hotel, The Grove Hotel. Room rates for our conference are \$119 a night. In addition to an outstanding educational program, we are planning some great events for you and your family. Below is a sampling:

Golf Tournament – Monday, June 25

Enjoy a round of golf on one of Boise's premier golf courses. Estimated cost is \$40.00 per person.

Western Dinner – Tuesday, June 26

Spend a wonderful evening of western entertainment with an old-fashioned horse-drawn covered wagon ride, music, and delicious BBQ.

White Water Rafting Idaho Style – Wednesday, June 27

You'll start this memorable trip by boarding the Thunder Mountain Express for a train ride through scenic Idaho stopping in Banks, Idaho for the thrill of your life. The staff of Cascade Raft will guide us down the south fork of the Payette River where you will experience class II and III rapids. Estimated cost is \$60.00 per person. You won't want to miss this opportunity!

Join us for a roaring good time!

Mindy Montgomery, President, WAWCB, 208-334-6059 mmontgomery@iic.idaho.gov
Dennis Burks, Conference Coordinator, 208-334-6002 dburks@iic.idaho.gov